

## § 1303.70

an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When OMB acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after OMB has received fee payments described in paragraphs (d)(1) and (2) of this section.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365)*. OMB should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

[52 FR 49154, Dec. 30, 1987, as amended at 63 FR 20515, Apr. 27, 1998]

### § 1303.70 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

[52 FR 49155, Dec. 30, 1987]

## PART 1304—POST EMPLOYMENT CONFLICT OF INTEREST

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AUTHORITY: Title V, Section 501(a), Pub. L. 95-521, as amended, 92 Stat. 1864; and Sections 1 and 2, Pub. L. 96-28, 93 Stat. 76 [18 U.S.C. 207]; 5 CFR 737.

SOURCE: 45 FR 84007, Dec. 22, 1980, unless otherwise noted.

## 5 CFR Ch. III (1-1-03 Edition)

### § 1304.4601 Purpose.

(a) This section sets forth OMB's policy and procedures under the Ethics in Government Act of 1978, 18 U.S.C. 207, and the Office of Personnel Management's implementing regulations, 5 CFR part 737, for determining violations of restrictions on post-employment activities and for exercising OMB's administrative enforcement authority.

(b) These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations. OMB acts on the premise that it has the primary responsibility for the enforcement of restrictions on post-employment activities and that criminal enforcement by the Department of Justice should be undertaken only in cases involving aggravated circumstances.

(c) These regulations do not incorporate possible additional restrictions contained in a professional code of conduct to which an employee may also be subject.

(d) Any person who holds a Government position after June 30, 1979, is subject to the restrictions under this section; except that the new provisions applicable to Senior employees designated by the Director of the Office of Government Ethics are effective February 28, 1980.

### § 1304.4604 Definitions.

(a) *Government Employee* includes any officer or employee of the Executive Branch, those appointed or detailed under 5 U.S.C. 3374, and Special Government Employees. It does not include an individual performing services for the United States as an independent contractor under a personal service contract.

(b) *Former Government Employee* means one who was, and no longer is, a Government employee.

(c) *Special Government Employee* means an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days. This applies whether the

Special Government Employee is compensated or not.

(d) *Senior Employee* means an employee or officer as designated in the statute or by the Director of the Office of Government Ethics. The Director of the Office of Government Ethics has designated civilians who have significant decision-making or supervisory responsibility and are paid at or equivalent to GS-17 or above as Senior Employees. Civilians paid at the Executive level are automatically designated by statute as Senior Employees. (A list of Senior Employee positions is found at 5 CFR 737.33.)

**§ 1304.4605 Post-employment restrictions.**

(a) General Restrictions Applicable to All Former Government Employees:

(1) *Permanent Bar*. A former Government employee is restricted from acting as a representative before an agency as to a particular matter involving a specific party if the employee participated personally and substantially in that matter as a Government employee. The government employee is also restricted from making any oral or written communication to an agency with the intent to influence on behalf of another person as to a particular matter involving a specific party if the former Government employee participated personally and substantially in that matter as a Government employee.

(2) *Two-Year Bar*. (i) A former Government employee is restricted for two years from acting as a representative before an agency as to a particular matter involving a specific party if the employee had official responsibility for that matter. The former Government employee is also restricted for two years from making any oral or written communication to any agency with the intent to influence on behalf of another person as to a particular matter involving a specific party if the employee had official responsibility for that matter.

(ii) In order to be a matter for which the former Government employee had official responsibility, the matter must actually have been pending under the employee's responsibility within the

period of one year prior to the termination of such responsibility.

(iii) The statutory two-year restriction period is measured from the date when the employee's responsibility for a particular matter ends, not from the termination of Government service.

(b) Restrictions Applicable Only to Former Senior Employees:

(1) *Two-Year Bar on Assisting in Representing*. (i) A former Senior Employee is restricted for two years from assisting in representing another person by personal appearance before an agency as to a particular matter involving a specific party if the former Senior Employee participated personally and substantially in that matter as a Government employee.

(ii) The statutory two-year period is measured from the date of termination of employment in the position that was held by the Senior Employee when he participated personally and substantially in the matter involved.

(2) *One-Year Bar on Attempts to Influence Former Agency*. (i) A former Senior Employee is restricted for one year from any transactions with the former agency on a particular matter with the intent to influence the agency, regardless of the former Senior Employee's prior involvement in that matter.

(ii) This restriction is aimed at the possible use of personal influence based on past Government affiliations in order to facilitate transaction of business. Therefore, it includes matters which first arise after a Senior Employee leaves Government service.

(iii) The restriction applies whether the former Senior Employee is representing another or representing himself, either by appearance before an agency or through communication with that agency.

(c) OFPP is a separate agency for purposes of the foregoing restrictions on post-employment activities.

**§ 1304.4606 Exemptions.**

(a) *General*. (1) Communications made solely to furnish scientific or technological information are exempt from these prohibitions.

(2) A former Government employee may be exempted from the restrictions on post-employment practices if the